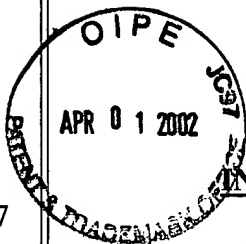


Docket No.
452345/0007
JJJ/DLS



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APR 03 2002

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

OFFICE OF PETITIONS

Applicant: **Henrik Aspe et al.**

Art Unit: **2166**

Application No.: **09/877,492**

Examiner: **Not Yet Known**

Filed: **June 8, 2001**

For: **ADAPTIVE INTERACTIVE PRECEPTORED TEACHING
SYSTEM**

RECEIVED

Date: **April 1, 2002**

APR 09 2002

Box Missing Parts
Commissioner for Patents
Washington, DC 20231

Technology Center 2100

**PETITION UNDER 37 C.F.R. § 1.181(a)(3) and
CONTINGENT PETITION UNDER 37 C.F.R. § 1.137(b)**

Sir:

Applicants have received a Notice of Incomplete Reply in the subject patent application. In view of the mailing date of this Notice of Incomplete Reply and the preceding Notice to File Missing Parts, Applicants are responding thereto by submitting this Petition Under 37 C.F.R. § 1.181(a)(3) and Contingent Petition Under 37 C.F.R. § 1.137(b), along with the accompanying Supplemental Reply to Notice to File Missing Parts and set of substitute drawings.

FACTS

1. A Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted was mailed on August 7, 2001 (Exhibit A). This Notice to File Missing Parts required the filing of (1) an executed Oath or Declaration, along with the requisite surcharge

under 37 C.F.R. § 1.16(e), and (2) substitute drawings having margins in compliance with the provisions of 37 C.F.R. § 1.84(g), within two months from the Notice's mailing date.

2. On February 1, 2002, Applicants filed a Response to Notice to File Missing Parts of Application (Exhibit B). This Response included executed Declaration forms and a Petition Under 37 C.F.R. § 1.136(a) extending the time for response to the Notice for four months, to February 7, 2002.

3. Applicants thereafter received a Notice of Incomplete Reply (Exhibit C) mailed on March 15, 2002. This Notice of Incomplete Response deemed the February 7 Response to be incomplete because drawings in compliance with 37 C.F.R. § 1.84(g) were not filed. The Notice of Incomplete Reply stated that the period for reply remains as set forth in the Notice to File Missing Parts, extensions of time being available under 37 C.F.R. § 1.136(a).

4. The undersigned understands that, pursuant to M.P.E.P. § 608.02(a), the U.S. Patent and Trademark Office will advise an applicant that their patent application contains drawings not suitable for publication because of non-compliance with 37 C.F.R. § 1.84 by sending the applicant a Notice to File Corrected Application papers. It is the undersigned's practice is to read, docket the due date for reply to, report to the Applicant, and thereafter promptly respond as the client instructs to any such Notice to File Corrected Application Papers.

5. Applicants did not receive a Notice to File Corrected Application Papers requiring that substitute drawings be filed.

6. Owing to inadvertence, at no time until receiving the Notice of Incomplete Reply mailed on March 15, 2002, did the undersigned recognize that substitute formal drawings had been required.

7. Applicants have filed herewith a Supplemental Response to Notice to File Missing Parts presenting the requisite substitute drawings in compliance with 37 C.F.R. § 1.84(g) (Exhibit D) (for conciseness, and to avoid confusion, the annexed copy of the Supplemental Response to Notice to File Missing Parts omits the substitute drawings filed along with the original paper.).

8. The substitute drawings filed herewith have been submitted outside of the fully-extended period for reply to the Notice to File Missing Parts (given the Notice to File Missing Parts' mailing date of August 7, 2001, the fully-extended period for reply thereto ended on March 7, 2001) and Applicants recognize that such filing is untimely. Accordingly, Applicants submit this Petition Under 37 C.F.R § 1.181(a)(3) and Contingent Petition Under 37 C.F.R. § 1.137(b) to obtain entry of those drawings and resumption of prosecution on the merits of this application.

PETITION UNDER 37 C.F.R. § 1.181(a)(3)

For the following reasons, Applicants respectfully request that the Commissioner invoke his supervisory authority and accept and enter the substitute formal drawings filed herewith.

Although the inventors' Declarations required by the August 7 Notice to File Missing Parts were filed on February 1, 2002, it is acknowledged that the substitute drawings required by that Notice to File Missing Parts were not submitted by March 7, 2002, the five-times extended due date for reply to the Notice.

The necessary substitute drawings were not timely filed by the undersigned only because the undersigned did not appreciate that the August 7 Notice to File Missing Parts

required such drawings. As noted above, it is the undersigned's practice to docket and respond to such Notices to File Corrected Application Papers, but here, no such Notice to File Corrected Application Papers was received.

Applicants respectfully petition the Commissioner to now accept the drawings for the following two reasons.

First Ground for Relief:

Applicants' first ground for relief is that the accompanying substitute drawings should be accepted because the Patent and Trademark Office did not follow the procedures established by the M.P.E.P. for advising an applicant that such substitute drawings are required, and upon which established procedures the undersigned had relied.

Specifically, Applicants submit that the procedure followed in this application by the Office of Initial Patent Examination (OIPE) to advise that substitute drawings were required did not comply with the M.P.E.P. M.P.E.P. § 608.02(a), entitled "New Drawing - When Replacement is Required Before Examination" states in pertinent part:

Drawings in utility and plant applications filed on or after November 29, 2000, other than continued prosecution applications (CPAs), will be reviewed by the Office of Initial Patent Examination (OIPE) for compliance with certain requirements of 37 CFR 1.84. **OIPE will send a Notice to File Corrected Application Papers if the drawings are not acceptable for purposes of publication.** The notice will give applicant a time period of 2 months from the mailing date of the notice to file acceptable drawings. (emphasis added)

As the OIPE did not send a Notice to File Corrected Application papers, but rather, included a requirement for substitute drawings in a Notice to File Missing Parts, the OIPE did not comply with the procedure specified by M.P.E.P. § 608.02(a).

Applicants respectfully submit that the OIPE's failure to follow the practice established by M.P.E.P. § 608.02(a) was the direct cause of the undersigned's failure to timely file substitute drawings. Had the OIPE followed the procedure specified by M.P.E.P. 608.029a) and issued a Notice to File Corrected Application Papers, the undersigned, in accordance with his standard practice, would have recognized and timely responded to that Notice by filing substitute drawings.

Applicants therefore respectfully petition the Commissioner to exercise his supervisory authority and accept the accompanying substitute drawings and continue prosecution of this application.

Second Ground For Relief:

Applicants' second ground for relief is that the accompanying substitute drawings should be accepted because the Patent and Trademark Office did not mail the Notice of Incomplete Reply until after the deadline for filing the substitute drawings had passed.

The Notice of Incomplete Reply was mailed on March 15, more than a week after the end of the fully-extended period for response to the Notice to File Missing Parts, more than six weeks after the Notice to File Missing Parts was filed, and more than three weeks after the Notice to File Missing Parts was received by OIPE.

The undersigned only realized that the August 7 Notice had required substitute drawings when the undersigned received the March 15 Notice of Incomplete Reply.

The purpose of a Notice of Incomplete Reply is to afford an applicant an opportunity to rectify a deficiency in the content of a filing. It is clear from the very language of

the Notice of Incomplete Reply that this paper is meant to be sent within the extendable period during which corrective action rectifying the deficiency could be taken:

The period of reply remains as set forth in the Notice. You may, however, obtain EXTENSIONS OF TIME under the provisions of 37 CFR 1.136(a) accompanied by the appropriate fee (37 CFR 1.17(a)).

A complete reply must be timely filed to prevent ABANDONMENT of the above-identified application.

In other words, the Notice of Incomplete Reply contains language showing that the document is intended to sent to alert an applicant that corrective action still can be taken, including, if necessary, the filing of a petition for extension of time, because at the time the Notice is mailed the application is still pending.

That, however, was not the case here. The Notice of Incomplete Reply was only mailed after the period for correcting that deficiency as of right had ended.

Accordingly, Applicants respectfully request that, under the principles of equity and fairness, the Commissioner accept the accompanying substitute drawings and continue prosecution of this application.

This Petition is being filed within two months of the action complained of, namely, the Notice of Incomplete Reply dated March 15, 2002. Accordingly, this Petition complies with the requirements of 37 C.F.R. § 1.181(f) and is timely-filed.

The Commissioner is authorized to charge the \$130.00 fee for this Petition under 37 C.F.R. § 1.17, as well as any other fee which may be required, including any fee for an extension of time, to Deposit Account No. 19-4709.

In the event that this Petition Under 37 C.F.R. § 1.181(a)(3) is denied, Applicants respectfully request consideration and entry of the following Contingent Petition Under 37 C.F.R. § 1.137(b) to revive an unintentionally abandoned application.

CONTINGENT PETITION UNDER 37 C.F.R. § 1.137(b)

Subject to the contingency specified above, denial of the Petition Under 37 C.F.R. § 1.181(a)(3), Applicants authorize the Commissioner to charge the petition fee specified in 37 C.F.R. § 1.17(m), as well any other fees due in connection with the prosecution of this application, to Deposit Account No. 19-4709.

The Supplemental Response to Notice to File Missing Parts and substitute drawings filed concurrently herewith constitute a complete response to the outstanding paper, the Notice to File Missing Parts mailed on August 7, 2001.

Applicants hereby submit that the entire delay in filing this Contingent Petition Under 37 C.F.R. § 1.137(b), including the required reply, from the due date for the reply until the filing of this grantable petition pursuant to 37 C.F.R. § 1.137(b), was unintentional.

This Petition is being filed within two months of the action complained of, namely, the Notice of Incomplete Reply mailed on March 15, 2002. Accordingly, this Petition complies with the requirements of 37 C.F.R. § 1.181(f) and is timely-filed.

Favorable consideration and withdrawal of the abandonment of this application are respectfully requested.

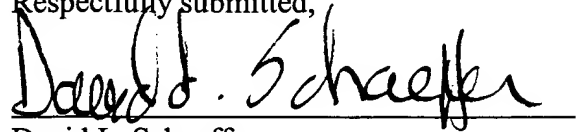
CONCLUSION

For all the foregoing reasons, favorable consideration and grant of the Petition Under 37 C.F.R. § 1.181(a)(3) is respectfully requested. In the alternative, favorable consideration and grant of the Contingent Petition Under 37 C.F.R. § 1.137(b) is respectfully requested.

Applicants respectfully submit that this application is in condition for allowance.

Early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, reading "David L. Schaeffer", written over a horizontal line.

David L. Schaeffer

Registration No. 32,716

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